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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-748

AMERICAN RADIO ASSOCIATION, AFL-CIO, et al.,
Petitioners,

versus

MOBILE STEAMSHIP ASSOCIATION, INC.
and ROBERT E. MALONE,
Respondents.

On Petition for a Writ of Certiorari to the
Supreme Court of Alabama

BRIEF OF RESPONDENT MOBILE STEAMSHIP ASSOCIATION IN OPPOSITION

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OPINIONS BELOW

The opinion of the Supreme Court of Alabama dated May 3, 1973, affirming the granting of a temporary injunction by the Circuit Court of Mobile County, Alabama, is reported at 279 So.2d 467, and is set forth in petitioners' Appendix C.

The denial by the Supreme Court of Alabama of petitioners' application for rehearing, which is dated July

5, 1973, and which was entered without opinion, is set forth in petitioners' Appendix D.

The order of the Circuit Court of Mobile County, Alabama, dated November 11, 1971, is set forth in petitioners' Appendix E.

JURISDICTION

The basis of the Court's jurisdiction is adequately set forth in the petition.

QUESTIONS PRESENTED

1. Whether the state court erred in concluding that it had jurisdiction to enjoin picketing by petitioners, American unions in a dispute with foreign-owned, foreign-flag ships manned by foreign crews represented by foreign unions, where the state court concluded that the picketing by petitioners had as a purpose the interference with the businesses of neutral third parties in violation of state policy.

2. Whether the state court, upon finding that the picketing by petitioners was counter to state policy in a domain open to state regulation, violated petitioners' First and Fourteenth Amendment rights by granting a temporary injunction restraining said picketing.

STATUTES INVOLVED

Respondents contend that the jurisdictional scope of the Labor Management Relations Act, as amended,

29 U.S.C. §§141-187, does not extend to the conduct of parties to disputes which relate to the internal affairs of foreign ships. This question cannot be answered by reference to any particular section of the Act.

The policy of the State of Alabama against wrongful interference in the business of another is reflected, in part, by statute, viz:

> "Two or more persons who, without a just cause or legal excuse for so doing, enter into any combination, conspiracy, agreement, arrangement, or understanding for the purpose of hindering, delaying or preventing any other persons, firms, corporations, or associations of persons from carrying on any lawful business, shall be guilty of a misdemeanor." Ala. Code, Tit. 14, §54 (1940) (Recomp. 1958).

STATEMENT OF THE CASE

The petitioners' description of the factual background presented to the Mobile County Circuit Court is conspicuously incomplete in several respects. In particular, there is a complete failure to detail the evidence presented as to the (1) *purpose* and (2) *consequence* of the picketing activites enjoined by the state court. We will attempt here to complete the factual picture presented to the Circuit Court of Mobile County on which its order granting preliminary injunctive relief was based.

On November 3, petitioners established a picket line at the Alabama State Dock gates (69a)* and maintained such pickets at "every conceivable land surface entrance to the Alabama State Docks" (133a) until November 5, the day this injunction suit was filed. The picketing was conducted by American seamen's unions, and the dispute, as evidenced by the picket signs, related to the alleged substandard wages of the foreign crews on foreign ships.

Although the situs of petitioners' picketing was subsequently shifted to the berths of two foreign-flag vessels, petitioners had instructions to picket all foreign vessels in the Port (126a) according to their only witness, Mr. Louis Neira, Port Agent of Seafarers International Union. He also testified that 70-80% of the vessels that call at the Port of Mobile are foreign flag (126a).

At the time petitioners began their picketing, farmers in the southern United States were harvesting their soybean crop, much of which was to be exported for sale overseas. An estimated 13,000,000 bushels of soybeans, valued in excess of $50,000,000 (74a), were in the fields of this state and in the elevators at the Alabama State Docks, waiting to be shipped through the Port of Mobile (74a). Soybeans must be harvested when ripe, otherwise they will be lost. The elevators at the Alabama State Docks and other storage facilities can accommodate only a small amount of the annual

*Unless otherwise noted, all citations are to the Appendix to Petition for a Writ of Certiorari to the Supreme Court of Alabama, filed by petitioners.

crop so there must be a continuous flow through the Docks' facilities into ships for carriage.

Petitioners' pickets brought an immediate halt to the loading and discharging of ships at the Port (61a-75a). As expected, longshoremen refused to cross petitioners' picket lines to load or discharge vessels (*ibid*). Thus, millions of bushels of soybeans were in danger of being lost through spoilage.

Additionally, member companies of the Mobile Steamship Association were losing in excess of $15,000 per day in fixed overhead costs while the picketing continued (73a). Vessel demurrage costs ranging from $2,000 to $5,000 per day per vessel were forfeited (73a). Ocean freight revenues were lost at the rate of $35,000 per vessel per day (74a).

Other facets of the Mobile economy were affected by the picketing in the Port. The Mobile economy loses in excess of $3,300,000 per week from a work stoppage in the Port (74a). Thus, the work stoppage caused by petitioners had an immediate, significant impact on the economy of Mobile and its neighboring communities. Other forms of transportation, such as rail, barge and truck lines, which would have normally been busy moving cargo in and out of the Port were idled with resultant losses (74a). Manufacturers dependent upon raw materials flowing through the Port were slowed in their production (74a).

In addition to the dock workers who did not cross the picket lines, a large number of other employees

directly connected with the industry had to be furloughed or laid off because of lack of work due to the picketing (74a). The docks facilities of the State of Alabama which consist of all of the public wharves in the Port of Mobile valued in excess of $50,000,000, were largely idled by the picketing (74a).

The effect of petitioners' picketing in the Port of Mobile, if it had been allowed to continue, would have been disastrous in terms of the economic interests of Mobile and the area's farmers, which stood to lose incalculable sums of money and business because of petitioners' ability to close the Port with its pickets.

Although the unions claim that their picketing was purely for the purpose of informing the American public of the plight of American seamen who had lost job opportunities to foreign seamen crewing foreign vessels, the testimony of the unions' only witness, Louis Neira, belied that claim and revealed that the unions had other motives. Mr. Neira testified on cross-examination, as follows (125a):

"Q. Now Mr. Neira, are you familiar with the type flag vessels that call at the Port of Mobile?
A. Oh, yes.
Q. What percentage of the vessels that call here at the Port are of foreign flags?
A. I would say about 70 to 80 percent.
Q. Yes, sir. And it's your instructions from your International Headquarters to picket

70 or 80 percent of the vessels that call at the Port of Mobile?
A. Within my resources, yes, to picket every one.
Q. All right, sir. And you would assume, as a man knowledgeable in the field of labor picketing that good labor men and good Union men would not cross those picket lines?
A. We were hoping that they wouldn't do that.
Q. Yes, sir. And this hope has been fulfilled in the Port of Mobile as far as longshoremen are concerned, isn't that true?
A. Well, to a point, yes.
Q. Now, would it not be then a fair conclusion to say that you had hoped and do hope that you will be able to prevent 70 or 80 percent of the vessels in the Port of Mobile from loading or unloading cargo?
A. My hope is to clutter up the Port of Mobile with foreign ships — Liberian, Panamanian ships — to bring sufficient pressure on the United States Government to do something about the American merchant marine.
Q. That is your intention?
A. Yes, sir.
Q. That is your purpose?
A. Yes, sir."

(130a)

"Q. ... You realize that your picketing is preventing members of the Association from

loading and unloading these vessels that you are picketing?

A. I hope that my picket line will shut the whole State Docks down and let everybody go home for awhile. I hope I can do that. Not just the Mobile Steamship Association."

(143a-44a)

"Q. All right, sir. Now, when you told these pickets to carry this sign that said 'don't patronize this vessel' — 'Please do not patronize this vessel' —

A. Oh, yes, very polite.

Q. What did you mean by patronize?

A. The only sense that I can understand 'patronize', don't do nothing for it.

Q. Don't do any business?

A. That's right.

Q. Well, you hope the longshoremen read the picket signs, don't you?

A. I hope everybody does.

Q. Yes sir. Including longshoremen?

A. Including longshoremen. Including Mobile Steamship Association."

(140a)

"Q. Mr. Neira, you are trying to prevent the AQUA GLORY's last remaining cargo from being discharged and her being used to carry a cargo of grain (soybeans), aren't you?

A. Yes."

After the Circuit Court of Mobile County entered its temporary injunctive order restraining the petitioners' picketing, petitioners filed an appeal to the Supreme Court of Alabama, which could have been expedited pursuant to Alabama law. Ala. Code, Tit. 7, §1057 (1940) (Recomp. 1958). Instead of expediting their appeal, however, petitioners delayed its hearing for over a year by requesting and obtaining eight extensions of time for the filing of the transcript and their brief.

While the petitioners' appeal to the Alabama Supreme Court was pending, they filed a separate action in the United States District Court for the Southern District of Alabama seeking to enjoin further state court proceedings. After the district court refused to grant a preliminary injunction of the state court proceedings, the petitioners appealed to the Fifth Circuit Court of Appeals, which affirmed, holding that the court below had not abused its discretion in refusing the requested preliminary relief. *American Radio Association v. Mobile Steamship Association*, 483 F.2d 1 (5th Cir. 1973).

Petitioners' appeal to the Supreme Court of Alabama, notice of which was filed on November 22, 1971, was finally argued to that Court on February 13, 1973. The Supreme Court of Alabama affirmed the lower court's decision and petitioners' application for rehearing was denied on July 5, 1973.

REASONS FOR DENYING THE WRIT

The petition presents two issues for review by the Court. The threshold issue, whether the state court's jurisdiction to adjudicate the matter is preempted by the Labor Management Relations Act, as amended, is now before the Court in *Windward Shipping (London) Limited v. American Radio Association*, case no. 72-1061. That case was orally argued to the Court on December 3, 1973, and comprehensive briefs setting forth why the state court's jurisdiction is nct peeempted in this factual setting have been filed.* The Court's disposition of the preemption issue in *Windward* will determine that issue in the case at bar.

As to the second issue raised by the petition, that dealing with whether the picketing was constitutionally protected free speech, the Supreme Court of Alabama correctly decided that picketing of the sort conducted in this case which has the intended and actual effect of causing organized labor not to cross the picket lines and not to perform services for the ships being picketed and which, according to the testimony of the union witness, was intended to "clutter up the Port of Mobile with foreign ships" and "to shut the whole State Docks down and let everyone go home for awhile" is something more than pure speech and is subject to regulation. Assuming, as we urge, that there was no preemption because the dispute related to the internal affairs of foreign ships, ie. the alleged sub-

*This respondent appeared and with the consent of the parties filed a brief as *amicus curiae* in *Windward*.

standard wages of the foreign crews, its holding that petitioners' picketing could be temporarily restrained, pending a full hearing on the permanent injunction, was proper and raises no questions which call for review by this Court. This is particularly true as the relief granted by the Alabama Court was merely temporary injunctive relief pendente lite and was not a final determination on the merits.

ARGUMENT

This Court has repeatedly held, and the petitioners acknowledge in their brief, that picketing, even though peaceful, may be permissibly restrained by a state court when it is "counter to valid state policy in a domain open to state regulation."* *International Brotherhood of Teamsters v. Vogt*, 354 U.S. 284 (1957). *Accord, Hughes v. Superior Court of California*, 339 U.S. 470 (1950); *International Brotherhood of Teamsters v. Hanke*, 339 U.S. 470 (1950); and *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949). The Supreme Court of Alabama carefully reviewed the evidence presented to the Circuit Court of Mobile County and concluded on the application for interim relief that there was sufficient evidence to raise a substantial question as to whether petitioners' picketing was contrary to the policies and interests of Alabama and that the trial court did not abuse its discretion in deciding to grant a temporary injunction to maintain the status

*Since the reasons that the case at bar is "in a domain open to state regulation" have been thoroughly briefed and argued to the Court in *Windward*, they will not be reargued here.

quo until a full hearing could be had on the merits of the case. The Alabama court expressed its inquiry on appeal in the following terms:

> "We must decide whether the trial judge abused his discretion by concluding that there was wrongful interference with Appellees' business warranting his issuance of the temporary writ."

The court concluded:

> "The dispute was either one between the unions and the foreign shipowners to force a raise in the internal standards of those vessels, or one where the intent was to block the use of those ships . . . ."

The court went on to review the testimony of the union witness as to the goals of the unions and concluded that appellees had standing to sue under Alabama law because:

> "We think there was evidence sufficient to support a finding that the action of the unions was in part with the goal of interfering with the business of the appellees in their shipping and farming operations."

The decision of the Supreme Court of Alabama in the case at bar is in accord with the long-standing policy of Alabama and other states that a person or firm shall be permitted to conduct its business without

wrongful interference from others. That policy in Alabama is expressed in both the state's criminal statutes [Ala. Code, Tit. 14, §54 (1940) (Recomp. 1958)] and its case law. See *Pennington v. Birmingham Baseball Club*, 277 Ala. 336, 170 So.2d 410 (1964); *Sparks v. McCrary*, 156 Ala. 382, 47 So. 332 (1908). As the Supreme Court of Alabama stated in its opinion in the case *sub judice:*

> "The right to conduct one's business without the wrongful interference of others is a valuable property right which will be protected if necessary, by injunctive process." 279 So.2d at 475, quoting *Carter v. Knapp Motor Co.*, 243 Ala. 600, 11 So.2d 383 (1943).

Petitioners contend that the Alabama courts were limited in their inquiry as to the purposes of petitioners' picketing to the language on petitioners' placards and the leaflets which their pickets distributed. There was other evidence, however, which established the true purposes of the picketing and the Alabama courts quite properly examined all of the evidence in considering whether the trial court had abused its discretion in granting a temporary injunction. Since the petitioners chose to present only one witness at the hearing, it is understandable that the Supreme Court of Alabama gave considerable emphasis to his testimony in its opinion. The unions' witness, Louis Neira, Port Agent for the Seamen's International Union,

who was speaking for "all the Maritime Unions"* that were picketing, admitted on cross-examination:

> "A. My hope is to clutter up the Port of Mobile with foreign flags — Liberian, Panamanian ships — to bring sufficient pressure on the United States Government to do something about the American merchant marine.
> Q. That's your intention?
> A. Yes, sir.
> Q. That's your purpose?
> A. Yes, sir.
> • • •
> "A. I hope that my picket line will shut the whole State Docks down and let everybody go home for a while. I hope I can do that. Not just the Mobile Steamship Association."**

*Mr. Neira was instructed at the outset of cross-examination: ". . . when I say 'your', by that I mean all the Maritime Unions that are in fact picketing . . ." (115a)

**The testimony that one of petitioners' purposes in picketing was to close the Port of Mobile to foreign shipping contradicts the optimistic statement of the Solicitor General in the Supplemental Memorandum of the United States as *Amicus Curiae* in *Windward*. There, in discussing the power of the petitioner unions over American shipping should their picketing be deemed protected by the Labor Management Relations Act, the Solicitor General observed:

> "The campaign undertaken by the . . . unions — if protected — could effectively close our ports to foreign-flag vessels. Close to 95 percent, by tonnage (and 81 percent, by value), of our waterborne foreign trade is carried on foreign-flag vessels (Preliminary Census Figures, 1972). Manifestly any significant interruption of foreign-flag service carrying United States cargo would have substantial economic consequences, not only upon shipowners, but also upon American exporters and importers and their employees, as well as those employed at our ports.
> "We do not suggest that the . . . unions have any purpose other than a legitimate interest in protecting their own members' job opportunities, and *we would not expect that picketing* — even if protected — *would be used to close American ports entirely to foreign vessels.*
> • • •
> "If this picketing is held to be protected by the National Labor Relations Act, the . . . unions will be accorded the *power* substantially to affect our trade with the rest of the world and our international relations." Supplemental Memorandum of the United States As *Amicus Curiae* at 15, 16, *Windward Shipping (London) Limited v. American Radio Association, AFL-CIO*, No. 72-1061 (emphasis added in part).

The court noted that picketing of the sort involved in this case which had the intended and expected effect of causing organized labor to refrain from crossing the picket line and to refrain from loading and unloading the picketed ships is something more than communication by pure speech and thus is subject to regulation. As the dispute was rightly found to be beyond the scope of the NLRA, regulation by the state is not precluded. The Alabama Supreme Court held that because the dispute endangered the business activities of a large segment of the area's population it was neither illegal nor improper for the trial court to take jurisdiction and deal temporarily with the subject matter. This was, we submit, neither unconstitutional nor unreasonable.

It must be emphasized that the Alabama trial court was concerned merely with an application for interim

relief, and the Alabama Supreme Court was concerned with whether the trial court abused its discretion in granting such relief pending a final determination on the merits.

Clearly, picketing by American seamen's unions which sought to force foreign ships with foreign crews represented by foreign unions to raise the wage level to American standards or to prevent such ships from loading and unloading cargo in the Port of Mobile because the wages of the crews are less than those paid on American ships, and which had an intended effect of "cluttering the Port of Mobile with foreign ships" and "closing down the State Docks" and in so doing to cause untold hardship to farming and other local interests in Alabama by interfering with the carrying on of their lawful business activities might well be contrary to a valid public policy of the State of Alabama. As testified by the union witness, 70 to 80% of the ships which call at Mobile to pick up export cargo and to leave off import cargo are, in fact, foreign ships.

Understandably, the petitioners seek to characterize Mr. Neira's testimony as a "personal" expression of "hope" (Petition, pp. 18-19). In doing so, however, they would have the Court overlook the fact that Mr. Neira was not a mere union member but rather the Port Agent for the SIU in the Port of Mobile; he was the *only* witness the unions called to explain what they were seeking to accomplish; and, finally, his explanation of the purpose of picketing was not just his personal explanation but that of "all of the Maritime Unions" that were picketing (115a). Moreover, trial

counsel for petitioners stipulated in open court that the object of the picketing was to cause a cessation of business with the ships picketed.*

In summary, the Supreme Court of Alabama affirmed the granting of interim injunctive relief only after it determined that there were important state policies and interests involved and that it was not an abuse of the trial court's discretion to maintain the status quo pending a final determination. The opinion is consistent with the directives of this Court in *Vogt, Hughes, Hanke* and *Giboney, supra.*

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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*Counsel for respondents stated at the outset of the state court hearing: "[w]e have no wish to say that our object is not to cause people not to do business with those ships . . ." (60a).

CERTIFICATE OF SERVICE

I, Frank McRight, one of the attorneys for Respondent Mobile Steamship Association herein, do hereby certify that on this ____ day of January, 1974, three copies of the foregoing brief in opposition to the petition for writ of certiorari have been served on each of the following attorneys of record:

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_____

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